

**Response to U.S. Application No. 10/798,212
Docket No. 80-20697599 (formerly 9495-003)
•Reply to the Office Action dated February 27, 2008**

Amendments to the Specification:

Please amend the specification as follows:

1. Please replace the last paragraph in page 2 (lines 21-29) and first paragraph of page 3 (lines 1-2) with the following replacement paragraphs (added text is underlined):

“ Title 26, Section 1031 of the Internal Revenue Code (hereinafter "IRC Section 1031") permits deferral of the taxes that would be due upon the sale of Like Kind Property by reinvesting the resulting proceeds into other Like Kind Property, subject to several conditions ("1031 Exchange"). The text of the IRC Section 1031 is reproduced herein:

Section 1031

STATUTE

(a) Nonrecognition of gain or loss from exchanges solely in kind

(1) In general

No gain or loss shall be recognized on the exchange of property held for productive use in a trade or business or for investment if such property is exchanged solely for property of like kind which is to be held either for productive use in a trade or business or for investment.

(2) Exception

This subsection shall not apply to any exchange of -

- (A) stock in trade or other property held primarily for sale,**
- (B) stocks, bonds, or notes,**
- (C) other securities or evidences of indebtedness or interest,**
- (D) interests in a partnership,**
- (E) certificates of trust or beneficial interests, or**

(F) choses in action. For purposes of this section, an interest in a partnership which has in effect a valid election under section 761(a) to be excluded from the application of all of subchapter K shall be treated as an interest in each of the assets of such partnership and not as an interest in a partnership.

- (3) Requirement that property be identified and that exchange be completed not more than 180 days after transfer of exchanged property**

For purposes of this subsection, any property received by the taxpayer shall be treated as property which is not like-kind property if -

(A) such property is not identified as property to be received in the exchange on or before the day which is 45 days after the date on which the taxpayer transfers the property relinquished in the exchange, or

(B) such property is received after the earlier of -

(i) the day which is 180 days after the date on which the taxpayer transfers the property relinquished in the exchange, or

(ii) the due date (determined with regard to extension) for the transferor's return of the tax imposed by this chapter for the taxable year in which the transfer of the relinquished property occurs.

(b) Gain from exchanges not solely in kind

If an exchange would be within the provisions of subsection (a), of section 1035(a), of section 1036(a), or of section 1037(a), if it were not for the fact that the property received in exchange consists not only of property permitted by such provisions to be received without the recognition of gain, but also of other property or money, then the gain, if any, to the recipient shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property.

(c) Loss from exchanges not solely in kind

If an exchange would be within the provisions of subsection (a), of section 1035(a), of section 1036(a), or of section 1037(a), if it were not for the fact that the property received in exchange consists not only of property permitted by such provisions to be received without the recognition of gain or loss, but also of other property or money, then no loss from the exchange shall be recognized.

(d) Basis

If property was acquired on an exchange described in this section, section 1035(a), section 1036(a), or section 1037(a), then the basis shall be the same as that of the property exchanged, decreased in the amount of any money received by the taxpayer and increased in the amount of gain or decreased in the amount of loss to the taxpayer that was recognized on such exchange. If the property so acquired consisted in part of the type of property permitted by this section, section 1035(a), section 1036(a), or section 1037(a), to be received without the recognition of gain or loss, and in part of other property, the basis provided in this subsection shall be allocated between the properties (other than money) received,

and for the purpose of the allocation there shall be assigned to such other property an amount equivalent to its fair market value at the date of the exchange. For purposes of this section, section 1035(a), and section 1036(a), where as part of the consideration to the taxpayer another party to the exchange assumed (as determined under section 357(d)) a liability of the taxpayer, such assumption shall be considered as money received by the taxpayer on the exchange.

(e) Exchanges of livestock of different sexes

For purposes of this section, livestock of different sexes are not property of a like kind.

(f) Special rules for exchanges between related persons

(1) In general

If -

- (A) a taxpayer exchanges property with a related person,
- (B) there is nonrecognition of gain or loss to the taxpayer under this section with respect to the exchange of such property (determined without regard to this subsection), and
- (C) before the date 2 years after the date of the last transfer which was part of such exchange -
 - (i) the related person disposes of such property, or
 - (ii) the taxpayer disposes of the property received in the exchange from the related person which was of like kind to the property transferred by the taxpayer, there shall be no nonrecognition of gain or loss under this section to the taxpayer with respect to such exchange; except that any gain or loss recognized by the taxpayer by reason of this subsection shall be taken into account as of the date on which the disposition referred to in subparagraph (C) occurs.

(2) Certain dispositions not taken into account

For purposes of paragraph (1)(C), there shall not be taken into account any disposition -

- (A) after the earlier of the death of the taxpayer or the death of the related person,
- (B) in a compulsory or involuntary conversion (within the meaning of section 1033) if the exchange occurred before the threat or imminence of such conversion, or
- (C) with respect to which it is established to the satisfaction of the Secretary that neither the exchange nor such disposition had as one of its principal purposes the avoidance of Federal income tax.

(3) Related person

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For purposes of this subsection, the term "related person" means any person bearing a relationship to the taxpayer described in section 267(b) or 707(b)(1).

(4) Treatment of certain transactions

This section shall not apply to any exchange which is part of a transaction (or series of transactions) structured to avoid the purposes of this subsection.

(g) Special rule where substantial diminution of risk

(1) In general

If paragraph (2) applies to any property for any period, the running of the period set forth in subsection (f)(1)(C) with respect to such property shall be suspended during such period.

(2) Property to which subsection applies

This paragraph shall apply to any property for any period during which the holder's risk of loss with respect to the property is substantially diminished by -

(A) the holding of a put with respect to such property,

(B) the holding by another person of a right to acquire such property, or

(C) a short sale or any other transaction.

(h) Special rules for foreign real and personal property

For purposes of this section -

(1) Real property

Real property located in the United States and real property located outside the United States are not property of a like kind.

(2) Personal property

(A) In general

Personal property used predominantly within the United States and personal property used predominantly outside the United States are not property of a like kind.

(B) Predominant use

Except as provided in subparagraph1 (C) and (D), the predominant use of any property shall be determined based on -

(i) in the case of the property relinquished in the exchange, the 2-year period ending on the date of such relinquishment, and

(ii) in the case of the property acquired in the exchange, the 2-year period beginning on the date of such acquisition.

(C) Property held for less than 2 years

Except in the case of an exchange which is part of a transaction (or series of transactions) structured to avoid the purposes of this subsection -

- (i) only the periods the property was held by the person relinquishing the property (or any related person) shall be taken into account under subparagraph (B)(i), and
- (ii) only the periods the property was held by the person acquiring the property (or any related person) shall be taken into account under subparagraph (B)(ii).

(D) Special rule for certain property

Property described in any subparagraph of section 168(g)(4) shall be treated as used predominantly in the United States.

FOOTNOTES

1. So in original. Probably should be "subparagraphs".

(end of Section 1031)

Thus, for example, the owner of a small store could use a 1031 Exchange to defer taxes when he or she sells the store and reinvests the proceeds in, for example, an apartment building. To receive all of the benefits from an IRC Section 1031 Exchange, (i) the purchase price of the new property ("Replacement Property") must be equal to or greater than the selling price of property sold ("Relinquished Property"), and (ii) to the extent the Relinquished Property was encumbered by debt, the investor must either utilize an equal or greater amount of debt to purchase the Replacement Property or contribute additional cash equal to or greater than such debt amount for the acquisition of the Replacement Property."

2. Please replace the second paragraph in page 7 (lines 3-14) with the following replacement paragraphs (added text is underlined):

" There are effectively two methods an owner of investment real estate can utilize to convert his or her investment into the equivalent of shares in a REIT. The first method is for the investor to simply sell his or her Like Kind Property and reinvest the proceeds in REIT shares. However, because REIT shares are not defined as Like Kind Property pursuant to IRC Section 1031 and an investor cannot therefore acquire REIT shares as Replacement Property under an IRC 1031 Exchange, this method may result in severe tax consequences for the investor, particularly if the investor is selling highly appreciated property

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and/or a property with a very low tax basis. The second method is for the investor to utilize a tax deferred exchange under Title 26, Section 721 of the Internal Revenue Code (hereinafter "IRC Section 721") by contributing his or her Like Kind Property into a partnership in exchange for interests in the receiving partnership, typically using what is known as an Operating Partnership within an Umbrella Partnership Real Estate Investment Trust, or UPREIT, structure. The text of the IRC Section 721 is reproduced herein:

Section 721

STATUTE

(a) General rule

No gain or loss shall be recognized to a partnership or to any of its partners in the case of a contribution of property to the partnership in exchange for an interest in the partnership.

(b) Special rule

Subsection (a) shall not apply to gain realized on a transfer of property to a partnership which would be treated as an investment company (within the meaning of section 351) if the partnership were incorporated.

(c) Regulations relating to certain transfers to partnerships

The Secretary may provide by regulations that subsection (a) shall not apply to gain realized on the transfer of property to a partnership if such gain, when recognized, will be includable in the gross income of a person other than a United States person.

(d) Transfers of intangibles

For regulatory authority to treat intangibles transferred to a partnership as sold, see section 367(d)(3).

(end of Section 721)"